

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 017

June 27, 1958

ALIMONY: LUMP SUM SETTLEMENT OF PERIODIC PAYMENTS

Syllabus:

A lump sum settlement of back alimony is income to the wife and a deduction to the husband in the year it is paid. However, a lump sum payment to release future claims to periodic alimony is not deductible by the husband nor income to the wife.

In 1930, W received an interlocutory decree of divorce from H, the decree incorporated an antecedent property settlement agreement which provided alimony payments of \$1500 annually. H made no payments for the years 1940 through 1944. In 1945, W signed two instruments releasing her alimony claims. One covered the back alimony payments and the other future alimony. W received a lump sum settlement for each. Advice is requested regarding the proper treatment of the 1945 payments.

Under the law in effect through 1942 alimony payments were not deductible by the divorced husband. Under the 1943 amendments periodic payments are taxable to the divorced wife and deductible by the divorced husband, but lump sum payments continued to be taxable to the husband and the courts have held a payment made to release future claims to periodic alimony to be a lump sum payment and not deductible by the husband.

The annual payments called for by the property settlement agreement are periodic payments taxable to the wife and deductible by the husband since 1943. Thus, the payments for 1943 and 1944 are taxable to W and deductible by H and the fact that they were paid in a lump sum in 1945 does not change their character as periodic payments. In the Appeal of Zina Van Dyke, State Board of Equalization, October 7, 1952, it was held that alimony payments accrued before 1943 but paid thereafter are taxable to the wife in the year received and deductible by the husband.